

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

BENNIE CLARK

PETITIONER

v.

No. 1:04CV322-P-D

WARDEN BRADLEY, ET AL., ET AL.

RESPONDENTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Upon consideration of the file and records in this action, the court finds that the Report and Recommendation of the United States Magistrate Judge dated May 11, 2005, was on that date duly served by mail upon the *pro se* petitioner at his last known address; that more than ten days have elapsed since service of the Report and Recommendation; and that no objection to the Report and Recommendation has been filed or served by any party. The court is of the opinion that the magistrate judge's Report and Recommendation should be approved and adopted as the opinion of the court. It is, therefore **ORDERED**:

1. That the Report and Recommendation of the United States Magistrate Judge dated May 11, 2005, is hereby approved and adopted as the opinion of the court.
2. That the state's April 13, 2005, motion to dismiss is hereby **GRANTED**.
3. That the instant petition for a writ of *habeas corpus* is hereby **DISMISSED** with prejudice and without evidentiary hearing as untimely filed under 28 U.S.C. § 2244(d).
4. That this case is **CLOSED**.

THIS, the 7th day of December, 2005.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE